

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KENNETH L. FAULKNER,)	Case No.: 1:21-cv-1612 JLT HBK
)	
Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS, DISMISSING PETITION
v.)	FOR WRIT OF HABEAS CORPUS, DECLINING
)	TO ISSUE CERTIFICATE OF APPEALABILITY,
STATE OF CALIFORNIA,)	AND DIRECTING CLERK OF COURT TO CLOSE
)	CASE
Respondent.)	
)	(Docs. 1, 10)
)	

Petitioner Kenneth L. Faulkner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 24, 2022, the assigned magistrate judge issued Findings and Recommendations finding the pending petition was successive and prohibited by 28 U.S.C. § 2244(b). (Doc. 10 at 2-3.) Therefore, the magistrate judge recommended the petition be dismissed for lack of jurisdiction. (*Id.* at 3-4.) The Findings and Recommendations were served upon Petitioner and contained notice that any objections thereto were to be filed within fourteen days after service. (*Id.* at 4.) In addition, Petitioner was advised the “failure to file objections within the specified time may result in the waiver of rights on appeal.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) Petitioner has not filed objections, and the deadline to do so has expired.

1 According to 28 U.S.C. § 636 (b)(1)(C), the Court conducted a *de novo* review of the case.
2 Having carefully reviewed the entire matter, the Court concludes the magistrate judge's Findings and
3 Recommendations are supported by the record and proper analysis.

4 Having determined that Petitioner is not entitled to habeas relief, the Court now turns to
5 whether a certificate of appealability should issue. The federal rules governing habeas cases brought
6 by state prisoners require a district court issuing an order denying a habeas petition to either grant or
7 deny therein a certificate of appealability. *See* Rules Governing § 2254 Case, Rule 11(a). A prisoner
8 seeking a writ of habeas corpus has no absolute entitlement to appeal; an appeal is only allowed in
9 certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); *see also* 28 U.S.C. §
10 2253(c)(1)(A) (permitting habeas appeals from state prisoners only with a certificate of appealability).
11 A judge shall grant a certificate of appealability “only if the applicant has made a substantial showing
12 of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and the certificate must indicate which
13 issues satisfy this standard, 28 U.S.C. § 2253(c)(3). In the present case, the Court finds reasonable
14 jurists would not find the rejection of Petitioner's claims to be debatable or conclude that the petition
15 should proceed further. Thus, the Court **ORDERS**:

- 16 1. The Findings and Recommendations issued on March 24, 2022 (Doc. 10), are adopted
17 in full.
- 18 2. The petition for writ of habeas corpus (Doc. 1) is dismissed.
- 19 3. The Court declines to issue a certificate of appealability.
- 20 4. The Clerk of Court is directed to close the case.

21
22 IT IS SO ORDERED.

23 Dated: **April 29, 2022**


UNITED STATES DISTRICT JUDGE